

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 23523 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

VIREN KHUSHALBHAI CHOKSI(HUF) & 2 - Petitioner(s)

Versus

GUJARAT STATE FINANCIAL CORPN. & 1 - Respondent(s)

=====

Appearance :

NANAVATI & NANAVATI for Petitioner(s) : 1 - 3.

MR DEVANG D TRIVEDI for Respondent(s) : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2005

ORAL JUDGMENT

1. With consent, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the

Constitution of India, the petitioners have prayed for appropriate writ, direction and/or order quashing and setting aside the impugned advertisement dated 23-11-05 published in Gujarat Mitra, Surat edition for re-auctioning the properties of M/s Dumas Resort Private Ltd. A further prayer is made for appropriate writ, direction and/or order directing the respondents to abide by the auction process held on 20-10-05 for the properties of M/s. Dumas Resort Private Ltd. pursuant to the advertisement dated 1-10-05 in favour of the petitioners.

3. It is the contention on behalf of the petitioners that the proceedings were initiated by the respondents for auctioning the properties of M/s Dumas Resort Private Ltd. under Section 29 of the State Financial Corporation Act, 1951, i.e. the said properties were put to auction and tenders were invited by public advertisement dated 1-10-05 inviting the bids to purchase the properties and interested parties were required to submit their application by paying Rs.100/- and were required to submit their tender on or before 19-10-2005 and the same were required to be open on 20-10-2005. It is the contention on behalf of the petitioners that accordingly the petitioner Nos.1 and 2 had submitted their tender and

purchased a form for letter of offer for purchase of assets of M/s Dumas Resort Private Ltd. and submitted their letter of offer for purchase of assets on 18-10-05 and offered a consolidated value of Rs.3,00,51,000/- for land, building and machinery along with two separate Pay Orders aggregating to Rs.5 lacs drawn on Dena Bank. It is also the contention on behalf of the petitioners that even prior to fixing the upset price, the valuation of the property was made by the respondents. The proceedings of open auction of the properties of the company were commenced on 20-10-2005. The members of the Regional Tender Committee of the respondents, Authorized Person of Prime Cooperative Bank Ltd. and the Representative of original borrower were also present. It is the contention on behalf of the petitioners that the open auction proceedings was started in presence of the representative and/or authorized persons of 11 Bidders including the petitioners and after 4 rounds of negotiations, the petitioners have raised their original offer from Rs.3,00,51,000/- to Rs.4,54,11,111/-. It is the contention on behalf of the petitioner that as the offer of the petitioners being the highest one, the same was declared and accepted by the Regional Tender Committee in presence of all the aforesaid respective parties with a condition that the petitioners should pay 50% of the

aforesaid amount within one month from the date of issuance of the acceptance letter and remaining 50% of amount shall be paid by the petitioners within three months with interest at the rate of Rs.12.5% as per the tender condition. It is the contention on behalf of the petitioners that thereafter the Earnest Money Deposit of Rs.5 lacs has been retained and credited in the account of the respondents. It is also the contention on behalf of the petitioners that the respondents have returned the respective Earnest Money to other remaining Bidders, save and except of 2nd highest bidder of Rs.4,53,00,000/-. It is the contention on behalf of the petitioners that in spite of the aforesaid fact, and the offer of the petitioners was the highest offer, instead of issuing same, the respondents have issued another advertisement inviting tenders/bids afresh on 23-11-05 and therefore the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. This court issued a notice in the present Special Civil Application on 6-12-05 with a view to ascertain the reasons for inviting fresh tenders for the properties in question which was already put to auction on 20-10-2005

for which according to the petitioners, the petitioners have offered the highest amount.

5. In response to the notice issued by this court, an affidavit-in-reply is filed on behalf of the respondents and para 4 of the affidavit-in-reply reads as under:

"As regards reasons for inviting fresh tenders for the property in question I say and submit that it is true that on 20-10-05 in exercises of powers conferred by section 29 of the SFC Act, Land building and machineries and furniture of M/s Dumas Resort Private Ltd., Surat was put to sale before the Regional Tender Committee to recover the huge outstanding of the defaulter company. It is submitted that in the said tender committee amongst the bidders the offer of the petitioners of Rs.4,54,11,111/- was received and kept pending by the committee by considering that it was a first attempt to fetch more price for the property in question and that compare to the valuation of Rs.4.13 crores though the offer of the petitioners was higher but the same is lower then appraisal value that is 5.38 crores and therefore the same was decided to keep pending for getting approval from the Recovery Committee."

Considering the above, this court further passed an order on 14-12-05 and considering the fact that as per the fresh advertisement inviting tenders, the tenders

were to be open on 15-12-05 and according to the respondents, the price offered by the petitioners was on the lower side, this court directed the respondents to open the tenders invited by them pursuant to fresh advertisement so as to know the highest offer received on the basis of the second advertisement inviting tenders and the respondents were directed to put the open tenders in a sealed cover and were directed to produce the same before this court. It is required to be noted that the highest offer received by the respondents pursuant to the second advertisement is not only on a much lower side i.e. offer of the petitioners but even the person who was the second highest pursuant to the earlier advertisement i.e. M/s Dharti Build Com Pvt. Ltd., who has earlier offered Rs.4.53 crores, has even reduced its offer to Rs.4.01 crores and requested to refund the EMD. Therefore, the offer of the petitioners to purchase the properties at Rs.4,54,11,111/- is the highest even considering the offer received by the respondents on the basis of even second advertisement. Under the circumstances, there is no reason now for the respondents not to accept the offer of the petitioners being the highest offerer. However, considering the request made by the respondents to offer some more amount, Shri S.I. Nanavati, learned senior advocate appearing on behalf of

the petitioners has immediately agreed to the same with a view to put an end to the litigation and under the instruction from his clients has agreed to pay Rs.4,61,00,000/- instead of Rs.4,54,11,111/- and to which Shri Trivedi, learned advocate appearing on behalf of the respondents has also accepted the same on the basis of the instruction given to him by the officers of the respondents - company. Under the circumstances, the respondents are now required to issue sale letter to sell the properties in question at Rs.4,61,00,000/-.

6. Shri Nanavati has submitted that as per the terms and conditions of the tender document and as per the terms of payment, 50% of the down payment is to be paid within one month from the date of sale letter and the balance amount to be paid within two equal monthly installments with interest at the rate of 12.5% within a period of two months thereafter and the possession of the assets is required to be handed over to the purchaser after receiving the full payment. Shri Nanavati has further submitted that in view of the above controversy, the petitioners would be requesting for some more time to meet the initial payment of 50% and the balance amount instead of two equal monthly installments in three equal monthly installments. In the peculiar facts and

circumstances of the case and the present litigation and more particularly, when the petitioners are required to pay the balance amount with interest at the rate of 12.5%, no prejudice will be caused to the respondents if, instead of two equal monthly installments, the petitioners are granted three equal monthly installments to pay the balance amount of 50% and instead of one month, six weeks are given to the petitioners to make the 50% of the down payment.

7. For the reasons as stated above, the offer of the petitioners to pay the amount of Rs.4,61,00,000/- is accepted being the highest offerer to purchase the properties in question and the respondents are directed to issue sale letter within a period of ten days from today and the petitioners are directed to pay 50% of the down payment (of Rs.4,61,00,000/-) within a period of six weeks from the date of sale letter and the balance amount to be paid within three equal monthly installments with interest at the rate of 12.5%. The rest of the conditions of the tender of document are not varied and the parties to comply with the conditions of tender document. It goes without saying that as per the tender document, the possession of the assets will be handed over to the purchaser only after receiving of full payment. This

Special Civil Application is disposed of accordingly.
Rule is made absolute to the aforesaid extent. However,
there will be no order as to costs. DS permitted.

(M.R.SHAH, J)

shekhar/-